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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1545)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—[illegible] Ridge, Lib.)): Thank you very much. Our apologies. Voting is always fun at this time of year.

Welcome, everybody, to meeting 119 of the Standing Committee on Industry, Science and Technology as we continue our fascinating, in-depth review of the Copyright Act.

We have with us today from the Professional Writers Association of Canada, Christine Peets, President; and from the Canadian Council of Archives, Nancy Marrelli, Special Adviser, Copyright.

Before we begin, Mr. Jeneroux, you had something you wanted to say.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Yes, thank you, Mr. Chair. I apologize to the witnesses for the few moments that this will take.

I do want to take the opportunity because of the exceptional circumstances that I believe we find ourselves in. I'm sure when the witnesses booked their travel a few weeks ago, they weren't anticipating that there would have been a pipeline purchase by the government at this point in time, so I want to take the opportunity to move the motion that we put on the Order Paper last Tuesday. The motion reads:

> That the Standing Committee on Industry, Science and Technology undertake a study of four meetings to review, among other things: the overall cost of buying and expanding the Trans Mountain Pipeline project, the costs related to oversight (crown corporation) of the project, and how this decision will impact investor confidence in Canadian resource projects; and that the Committee reports the findings back to the House and make recommendations on how to restore investor confidence.

I believe, again, it's imperative at this point in time, with the uncertainty in the energy sector created by the situation that the Prime Minister and the Minister of Finance have unfortunately put us into, that this be something we undertake urgently so that we have that study before us, and we're able to advise the House of Commons appropriately.

The Chair: Thank you very much.

First we have Mr. Graham and then Mr. Baylis.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I'm not really clear that it's relevant to having the witnesses here at this time. It's quite rude to the witnesses to do that right now.

The Chair: Go ahead Mr. Baylis.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): I move that we adjourn the debate.

The Chair: Debate will be adjourned, and we will move forward. Okay?

Mr. Brian Masse (Windsor West, NDP): Given that, Mr. Chair, I'm going to move my motion. If we're simply going to do that kind of a tactic, I will move my motion, which I have tabled in the committee.

The Chair: May I jump in? As we talked about earlier, after the witnesses, you can move your motion at that time so we're not wasting the witnesses' time. We agreed to allow that out of camera so that you can move it in public, then we can actually debate it, but it's your call.

Mr. Brian Masse: Do we have to vote on the motion? Procedurally, we can't talk about his motion now.

The Chair: We have to vote on the motion to adjourn the debate.

Mr. Brian Masse: That's where I was coming from.

The Chair: My apologies.

Mr. Frank Baylis: On a point of order, are we voting on my motion to adjourn the debate?

The Chair: To adjourn the debate, yes.

Mr. Frank Baylis: Are you all in favour of it?

An hon. member: No, not all.

Mr. Frank Baylis: Well, you just said it, so they're all in favour of my motion.

The Chair: Stop. It's not debatable. It's a vote on the motion to adjourn the debate.

(Motion agreed to: yeas, 5; nays, 4)

● (1550)

The Chair: On that note, Mr. Masse, can we move forward?

Mr. Brian Masse: Yes, we can move forward.

The Chair: Thank you.

To our witnesses, we are going to start off with Christine Peets. You have up to seven minutes. Thank you.

Ms. Christine Peets (President, Professional Writers Association of Canada): Good afternoon. Thank you for this opportunity to speak to you as you undertake this very important task.

I am here on behalf of the Professional Writers Association of Canada, known as PWAC. Our organization represents more than 300 non-fiction writers from coast to coast to coast. Copyright is an extremely important issue to us, as it affects our members' income and the respect that should be accorded us. We earn our living through our writing, and can only do so successfully when royalties are paid because we own the copyright. When we lose the right to claim the work as our own, income and respect are eroded.

Each year, PWAC members receive a repertoire payment as creator affiliates of Access Copyright, an organization that PWAC helped found. In the past 15 years, I have seen my payment diminish from several hundred dollars to less than $100 annually. Payments are based on the amount of work I report for the period being reviewed, which has fluctuated in part due to the fact that there are fewer print publications in Canada. Those that remain often have onerous contracts. Many publishers have instituted contracts giving almost all rights to the company and none, or very few, to the writer. This is common with our members.

To give you a concrete personal example, in 2009 I was presented with a contract to continue writing for a publication that had employed me since 2004. I reluctantly signed the contract but not before questioning it. I was being asked to give up all rights to material I had written. My client wanted certainty that I wouldn't be able to sue them if or when they reused my writing. Is this fair?

The company claimed that it now needed to secure these rights because of what became known as the Heather Robertson case, a class action suit launched in 1996. Ms. Robertson was the plaintiff against several major media outlets that reprinted her work electronically without permission or payment. Other writers were similarly affected. The case was finally settled, after 13 years. There have been similar lawsuits in the United States, and there very well could be another one in Canada. Should freelancers have to engage in lengthy and expensive lawsuits against media outlets in order to protect their copyright and income?

Contract issues may be beyond the scope of this committee, but I hope this helps to illustrate the importance of protecting our copyright. As B.C. PWAC member Connie Proteau wrote to me, "It is important that our creative professionalism continues to be respected and appreciated by...fellow Canadians who read and learn from our works. We need strong copyright laws to protect works that are available in print format."

To that I would add that we need strong copyright laws to protect all work, whether in print or electronic format. If writers are not fairly compensated and properly respected for their work, they will produce less work. Why would anyone continue to work without income or respect for the work? This could have a significant impact on the Canadian material available to Canadian readers, who may then look increasingly to other countries for their information. Ultimately, it could affect the quality of work being published, and perhaps the viability of our publishing industry. Canada needs a strong writing and publishing sector that contributes to the economy by providing both personal and corporate incomes that increase tax revenues.

Ontario PWAC member Michael Fay reminded me that our association and other writers' organizations played a critical role in the 2012 review of the Copyright Act, when copying restrictions and procedures were set. It is important to remember not only the user but the creator with this current review.

Another PWAC member from Ontario, Lori Straus, put it this way: "People copy creative work because it speaks to them and because it's easy to do. It's much harder to copy a KitKat: the effort wouldn't be worth it."

Finally, I would like to share with you another perspective. This was brought forward by B.C. PWAC member Ronda Payne. She draws an interesting comparison, as follows:

> No one debates who built a building or tries to usurp its ownership. What makes it acceptable to do so with the written word? It's not. We put just as much effort into writing as the architect, the contractor or the building owner [puts into their work]. When the building owner allows others to use his space, he is paid in the form of rent or a lease, or the sale of the building. As writers, we should be afforded the same recognition of our ownership and rights. When someone takes our work, without even considering payment to the creator, it's the equivalent of squatting in a building. I want people to appreciate my work, but I also want to be compensated for it. I deserve to be paid for the work I do.

Thank you very much for your time.

● (1555)

The Chair: Thank you very much.

We'll move now to Nancy Marrelli.

You have up to seven minutes.

Ms. Nancy Marrelli (Special Advisor, Copyright, Canadian Council of Archives): Thank you.

The Canadian Council of Archives, the Conseil canadien des archives, the CCA, is a national non-profit organization representing more than 800 archives across the country. Membership includes provincial and territorial councils across Canada, the Association des archivistes du Québec, and the Association of Canadian Archivists.

I want to talk first about technological protection measures or TPMs. Provisions introduced in 2012 prohibit the circumvention of TPMs, or digital locks, even for non-infringing purposes, such as preservation activities used by archivists to protect our holdings. This draconian measure is of grave concern in the digital environment, where obsolescence is both rapid and disastrous for long-term access. Of course, long-term access is what archives are all about.

Let me give you a fictional example of this problem. An archives holds a copy of a CD on the history of a small company that built birchbark canoes for over 150 years. It was the main industry in the town that grew around the factory. The CD was created by a group that came together briefly in 1985 as the company closed down. The only existing CD was deposited by the last surviving family member of the owners, and it includes photographs, oral history interviews, catalogues, and film footage, which are the kinds of materials commonly found in archives. The group disbanded after fire destroyed its office and all the original material it had collected. The original material has disappeared, and all that is left is the CD.

As the CD approaches obsolescence, the archives wishes to ensure that the contents are preserved for posterity. However, the CD is protected with a digital lock and the archives cannot locate the creators. It cannot circumvent the digital lock to preserve this unique material. As the CD becomes obsolete and the files become unreadable, we will lose this important part of our documentary history.

We recommend that the Copyright Act be amended so that circumvention of TPMs is permitted for any activity that is otherwise allowable under the act. Archives are allowed to reformat materials and reproduce them if they are in an obsolete or about-to-become obsolete format, but we're not allowed to use that exception if we have to circumvent a digital lock in order to do so.

I want to talk a little about crown copyright. Crown works are works that are prepared or published by or under the direction or control of Her Majesty, or any federal, provincial, or territorial government department. Copyright in crown works never expires unless the work is published, in which case the work is protected for 50 years from the date of the first publication.

Canadian archives hold millions of unpublished crown works of historical interest, including correspondence, reports, studies, photographs, and surveys—all kinds of works. We've been promised changes to crown copyright for decades and decades. Crown copyright provisions, as they stand now, do not serve the public interest in the digital age. They're long overdue for a comprehensive overhaul.

We recommend that the act be amended immediately so that the term of protection for crown works is 50 years from the date of creation, whether or not the works are published. We further recommend that there be a comprehensive study to identify problem issues, to consult with stakeholders, and to recommend solutions that serve the public interest in the digital age. We need to change these rules.

I want to talk a bit about reversion, which is not a very well-known provision in the Copyright Act. When transferring historical materials to archives, many donors assign the copyrights that they hold in those materials to the archives. Subsection 14(1) of the Copyright Act, reversion, is a little-known relic inherited from the 1911 British act. It provides that where an author who is the first owner of copyright in a work has assigned that copyright, other than by will, to another party—and the example I'll give is a contract to an archival repository—the ownership of the copyright will revert to the author's estate 25 years after his or her death. The estate will own the copyright for the remaining 25 years of the copyright term.

● (1600)

This provision cannot be overridden by additional contract terms. It's clearly undue interference in the freedom of an author to enter into a contract, and it's an administrative nightmare for archival institutions and for donor estates. It's just one of those things that's there, and people are not even aware of it.

We recommend that subsection 14(1) be repealed, or at the very least that it be amended to permit the author to assign the reversionary interest by contract, which is not currently allowed.

Regarding indigenous knowledge, it's a bit of a landmark day after yesterday's vote on the UNDRIP provisions. Canadian archivists are concerned about copyright protection of indigenous knowledge and cultural expressions: stories, songs, names, dances, and ceremonies in any format. We have all of these kinds of materials in the Canadian archives.

The foundational principles of copyright legislation are that copyright is owned by an author for a term based on the author's life. In the indigenous approach, there is ongoing community ownership of creations. Archivists are committed to working with indigenous communities to provide appropriate protection and access to the indigenous knowledge in our holdings, while at the same time ensuring the traditional protocols, concerns, and wishes of indigenous peoples are addressed.

We urge the federal government to engage in a rigorous, respectful, and transparent collaboration with Canada's indigenous peoples to amend the Copyright Act to recognize a community-based approach. The archives community will very happily participate in this process. We're eager, in fact, to do so. This is an issue that we believe needs to be resolved.

Thank you.

The Chair: We are going to go right into questioning.

Mr. Baylis, you have seven minutes.

Mr. Frank Baylis: Thank you, Chair. I won't be moving a motion.

Ms. Peets, you brought up something that we haven't heard before. We have heard a lot about the writers seeing their income going down, but you brought up a point about some challenges between the writers and the publishers.

Ms. Christine Peets: Yes.

Mr. Frank Baylis: You felt that there's an imbalance. Is that part of what is chewing into your income, these contracts that they said they force you to sign?

Ms. Christine Peets: Yes, it does. I can only claim work to which I still own copyright, for my Access Copyright payment, for example. If the publisher has taken all of the copyright and the moral rights, then I no longer have the right to that material. Therefore, I cannot put it into my repertoire for my Access Copyright payment.

Mr. Frank Baylis: What would you like to see the government do about that?

Ms. Christine Peets: That's why I said that I think the contracts are beyond the scope of this committee, but the copyright laws could be strengthened so that publishers no longer can ask for those rights, that those rights remain with the author.

Mr. Frank Baylis: That might sound like a good idea today, but would it not add something like Nancy brought up, cause problems for someone who may wish to do it and cannot do it?

Would you have something to add to that, Ms. Marrelli?

Ms. Nancy Marrelli: I wouldn't dare to comment on the writers. It seems like she's better placed to....

Mr. Frank Baylis: If you were, as an archivist, or someone who wanted to purchase all the rights.... Say we were to do what you're asking and write a law that you can't sell all your rights. Would that not impact—

Ms. Nancy Marrelli: Certainly, in terms of archival matters, knowing the actual status of the copyright is very important when something is deposited into an archive. That's why it becomes an issue. That's where the contractual agreements definitely come in.

The contractual agreements that any creator has have to be part of their archival deposit.

● (1605)

Mr. Frank Baylis: I'll go back to you, Ms. Peets. If we were to say that you cannot sell your rights to a publisher and someone wants to.... I don't see how that could work, to be honest.

Ms. Christine Peets: I'm not saying that the writer can't sell the rights to the publisher should they wish to, or can't enter into any other kind of contract with their right. What I'm asking is to make sure that the right to do as they wish with their work remains with the creator.

Mr. Frank Baylis: If I understand you, your publisher said, "This is a deal that I'm forcing on you." Maybe you could elucidate that for me. You could have said, "I don't want the deal."

Ms. Christine Peets: Yes.

Mr. Frank Baylis: If you say you don't want the deal, then you lose your publisher.

Ms. Christine Peets: Yes.

Mr. Frank Baylis: So they strong-armed you.

Ms. Christine Peets: Basically.

Mr. Frank Baylis: I still am at a loss to see what recommendation you'd like us to do in the Copyright Act to stop them from strong-arming you. There's an imbalance of power, I get that, but....

Ms. Christine Peets: Yes. I wish I could say that this could be legislated, but I don't think it can be. The only thing is to make the copyright laws strong enough that the publisher wouldn't then think that they can ask for that right. I think the way it's written now is perhaps a little weaker, and that's why the publishers have looked at that and said, "Yes, we want all of these rights." If the copyright laws were strengthened so that the publishers wouldn't look at that and ask for those rights.... I don't know what else you could do.

Mr. Frank Baylis: Okay. Thank you.

I'll move to Ms. Marrelli about the question of crown copyright.

On this topic, if it becomes readily available, it's one thing, and you're saying that if it's not published, it never becomes available after 50 years. How would you know about it, then? You want access to it and it's not published. How do you know it exists?

Ms. Nancy Marrelli: That's one of the issues. In archives, we certainly increasingly want to make materials available digitally. We have materials. We have a lot of these materials in the archives. People come to our reading rooms, but where people want to access archival materials now is on the Internet.

Mr. Frank Baylis: You're saying you cannot put the crown copyright on.

Ms. Nancy Marrelli: We have to get permissions. In fact, recently, the government has changed the way permissions for crown copyright have come about. It's devolved not to a single, centralized source but to the departmental source where the material was created.

Mr. Frank Baylis: You have this crown copyright in your archive. Someone comes along and says, "I'd like to access it", and it's a big to-do for you because—

Ms. Nancy Marrelli: You can access it in our reading rooms.

Mr. Frank Baylis: If they physically come....

Ms. Nancy Marrelli: Exactly.

Mr. Frank Baylis: If they don't physically show up, you're effectively making a copy. Is that it?

Ms. Nancy Marrelli: We want to digitize a lot of these materials —

Mr. Frank Baylis: Oh, you want to digitize them.

Ms. Nancy Marrelli: —because they have historical interest.

Mr. Frank Baylis: Okay. If it's not digitized.... I see.

Ms. Nancy Marrelli: We can't digitize it and put it on the Internet without permission.

Mr. Frank Baylis: You don't have the right.

Ms. Nancy Marrelli: And it has to go document by document.

Mr. Frank Baylis: I see.

Ms. Nancy Marrelli: If you want to digitize a folder, which might include 5,000 documents, you have to go document by document to get the permission.

Mr. Frank Baylis: If I understand it, your archives, the people you represent, have crown copyright documents.

Ms. Nancy Marrelli: Most archives in Canada do have crown copyright.

Mr. Frank Baylis: They'll have these crown copyright documents. They will be physical documents, a book, say.

Ms. Nancy Marrelli: Right. It could be a letter from an MP to a—

Mr. Frank Baylis: If someone wants to see that letter from an MP, they have the right to show up and say, "Show it to me"—

Ms. Nancy Marrelli: Yes.

Mr. Frank Baylis: —but you don't have the right to copy it and put it out there.

Ms. Nancy Marrelli: That's right.

Mr. Frank Baylis: Even if you wanted to put it out there, you'd have to physically go through every piece to get it....

Ms. Nancy Marrelli: Yes, and if the researcher wants to use the material, they have to get permission from the department.

Mr. Frank Baylis: Each department, too.... It's not even centralized.

Ms. Nancy Marrelli: Exactly. It's no longer centralized.

Mr. Frank Baylis: What do you see as a solution?

Ms. Nancy Marrelli: First of all, I think there's no reason to have perpetual copyright anymore for crown materials. Making it 50 years from the date of creation is a reasonable first accommodation.

Mr. Frank Baylis: That's a first step.

Ms. Nancy Marrelli: Yes, and I think that we then need to look at some of the more problematic areas, and I think we do need a proper.... There have been many different studies, but I think we need a current look at the issues, and we need to bring the stakeholders together to try to solve this problem, which definitely has solutions. Other jurisdictions have—

Mr. Frank Baylis: My time is up, but I'm sure my colleague will continue on that front.

The Chair: You were only over by three seconds.

Mr. Frank Baylis: That's rare for me.

The Chair: Thank you for being good about it.

● (1610)

[*Translation*]

Mr. Bernier, go ahead for seven minutes.

Hon. Maxime Bernier: Thank you, Mr. Chair.

[*English*]

Thank you very much for being with us.

My first question would be for Ms. Christine Peets.

You said during your presentation that your income changes a lot. Can you explain that a little more? Do you think that you're a specific case or does it also happen with other authors and creators in Canada?

Ms. Christine Peets: Yes, it has happened with a number of our members. I'm specifically referring to their Access Copyright payments.

Hon. Maxime Bernier: Yes.

Ms. Christine Peets: They have reported that they have gone down significantly, in some cases as much as 50%. This is due to the fact that they are losing the copyright to their works. They are being asked to sign over the copyright to particular works, so they lose that copyright and can no longer claim that work.

Hon. Maxime Bernier: Should a Canadian author be able to reclaim his or her copyright before his or her death by terminating its transfer of licensing? Do you agree with that?

Ms. Christine Peets: Yes. Again, the author should be able to determine where and to whom the copyright goes and for what period of time.

Hon. Maxime Bernier: Do you think we need to make a change in our legislation to be able to do that in Canada?

Ms. Christine Peets: Currently, it's 50 years after the death of the author. Most of my colleagues felt that was fair. I understand there is some consideration of going to 70 years, which would be acceptable as well.

Hon. Maxime Bernier: Thank you.

We will now hear from the Canadian Council of Archives.

Ms. Marelli, regarding the digital lot, you said it's something that we may improve. What is your...?

Ms. Nancy Marrelli: The anti-circumvention rules came in with the 2012 amendments to the act, and at the time there were many requests to make exceptions for the anti-circumvention laws. In fact, there were very few exceptions that are in the law.

For sure, I remember testifying to a committee exactly like this for the 2012 act that there was a problem for archives in not being able to circumvent a digital lock to carry out essential preservation activities For us, that is the issue. It's something we are allowed to do in the act, but because it sometimes involves circumvention of a digital lock, we cannot carry out that essential function. We are losing essential historical materials because we cannot circumvent in order to carry out an otherwise allowed act.

Hon. Maxime Bernier: Will you ask for a change in our legislation to give you an exception?

Ms. Nancy Marrelli: Yes. If there is an allowable act in the Copyright Act, we would ask that we be allowed to do circumvention in order to perform it.

[*Translation*]

Hon. Maxime Bernier: Okay, thank you.

[*English*]

The Chair: We're going to move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Thank you, Mr. Chair, and thank you to our witnesses.

I have been asking witnesses about the Copyright Board. What I am concerned about is that we get this review done and then the minister is going to respond to the review. Then, if there were some significant changes, it's most likely to come with a suggestion or legislation, which would require, in my opinion, more consultations. We're just getting a little bit of feedback now on the change process, but nothing specific has been offered up at this time. We could end up running out of time before the next electoral cycle.

Is there anything that could be done in the short term through the regulatory process or through improving the Copyright Board decision-making process and the enforcement process that would be beneficial at this time? I am looking for those things that perhaps would be through the lens of a regulatory approach versus that of a legislative approach, because the regulatory approach is a matter of the minister's decision and discretion.

● (1615)

Ms. Nancy Marrelli: The Copyright Board deals with published materials. Since archival materials for the most part are unpublished materials, our materials are not covered by the Copyright Board, so we don't have a lot to say about the Copyright Board.

I know that the process has been criticized for being very long and complicated. Certainly, we have issues around orphan works in archives. There have been some suggestions to include published materials as well as unpublished materials under the Copyright Board. I'm not sure that adding the burden of unpublished materials to the Copyright Board is the way to go for orphan works. I guess my answer, in terms of archives, is that I don't have any concrete suggestions, but I wouldn't recommend adding unpublished materials to the Copyright Board mandate at this point.

Mr. Brian Masse: Okay, that's helpful. That's what we're looking for.

Ms. Christine Peets: I think I would just add that, when it comes to published works, the Copyright Board does oversee those. I think what you're suggesting, a regulatory process as opposed to a legislative process, might be something that PWAC would definitely be interested in working on with you in further consultation.

Mr. Brian Masse: Yes. That's what I fear. We're hearing of quite a bit of disruption and disturbance amongst creative society. I also believe that, when you change rules, if there are going to be people who are affected by government policy, amelioration should be part of that change. It seems to me that there's a lot of artists and creators who are still trying to figure things out.

Ms. Christine Peets: That's very true. I think what we want to stress is that we do want to share our work, we want to have our work read and appreciated, and we want to be fairly compensated for that work. In past reviews, perhaps things were skewed a bit more to the end user, and somewhere the creator got lost in the shuffle. We want to make sure there is a balance, that the rights of the creator and the rights to the user are kept in check.

Mr. Brian Masse: If nothing changes over the next three years, can you do any crystal ball gazing? What is your greatest fear?

Ms. Christine Peets: I think the greatest fear is that, as more work does go from the print format to the electronic format and therefore can be shared much more quickly and more widely, the rights to that work will be lost. People find things on the Internet and they share them, and they don't necessarily take the time to figure out who wrote that in the first place and who that belongs to. That kind of goes along and it snowballs. That would be my fear. I think I can speak for the writers and the others in our association. We want to make sure our rights don't get lost in that shuffle.

Mr. Brian Masse: Thanks.

How much time do I have, Mr. Chair?

The Chair: You have two minutes.

Mr. Brian Masse: I'm just going to indulge the Canadian Council of Archives, just to thank you for your work. I know that sometimes you probably don't get the glory, in archives.

However, a true story is that when I was on city council, it was our municipal archives that led to the repatriation of the Windsor-Detroit tunnel on the Canadian side, its coming back to public ownership. This is significant because there was an archived document of the original agreement that put it in the private sector, through a P3, which they didn't want to relinquish. By the time we received the tunnel back, it was ready to float down the river because of the erosion on the top. We couldn't find people to replicate the actual exhaust and fan system, and it immediately required millions of dollars. To this day, it pays significant revenue for the City of Windsor and is a critical piece of Canada's infrastructure.

I'll just conclude by saying thank you to you and your members, who probably have not envisioned the glory, but you have actually saved one of Canada's significant pieces of infrastructure.

● (1620)

Ms. Nancy Marrelli: Thank you. That's what we do. That's what we're all about. It's about accountability and keeping the public record.

The Chair: Thank you.

May I say I've never seen this bridge of yours, but I have a clear vision in my mind because I've heard about it for the last three years. You're going to have to take us on a tour.

Voices: Oh, oh!

Ms. Nancy Marrelli: I've crossed it many times, but I didn't know that story.

Mr. Brian Masse: This one's about the tunnel, though.

The Chair: There you go.

We're going to move to Mr. Lametti. You have seven minutes.

Oh, sorry, I got the wrong David. It's Mr. Graham.

Mr. David de Burgh Graham: These naming conflicts; it's like in a computer file system.

Are there any circumstances in which you believe the use of a technological protection measure should override other copyright rules or fair dealing exceptions?

Ms. Nancy Marrelli: Sorry, could you repeat that?

Mr. David de Burgh Graham: Is there any time that you believe it's appropriate for a technological protection measure to override fair dealing? Should that ever happen?

Ms. Nancy Marrelli: I'm trying to imagine that situation. No, I think that really, fair dealing should stand on its own. I don't think TPMs should stand in the way of fair dealing.

Mr. David de Burgh Graham: I appreciate that. Thank you.

Do you have any comments, Christine?

Ms. Christine Peets: No, I don't. I don't understand the TPMs well enough to comment on that.

Mr. David de Burgh Graham: Fair enough.

Ms. Nancy Marrelli: You know, if it's something that's allowable in the act, a TPM should not prevent it from happening.

Mr. David de Burgh Graham: Thank you. That's exactly what I'm looking for.

In the digital age, it's so easy to register things now, if we wanted to. Does it still make sense for copyright to apply to everything automatically, or should we be thinking about copyright being on a proactive registration as it used to be?

Ms. Nancy Marrelli: I think it should be automatic.

Mr. David de Burgh Graham: It should be automatic?

Ms. Nancy Marrelli: Yes. That's pretty well an internationally accepted principle. I don't have a problem with that one at all.

Mr. David de Burgh Graham: Okay, that's why I asked.

We talked a lot about 50 years after the creation, of life plus 50 years. Is it appropriate for copyright to survive the life of the creator in the first place? On what basis do we have this system, in your view, in which copyright lasts longer than the person who created it?

Ms. Nancy Marrelli: The history of copyright, if you look at it, is a long one. It started out as a very short time period, then it has crept up. Archivists certainly believe that the period of protection, as it stands now, should not be extended. People's work needs to be properly recompensed.

Archives are a place where that balance in the act between creator and user is an everyday occurrence. The people who deposit their materials into the archives are creators. The users come to use those materials. We walk that line of balance every day, and I do believe that the term of protection, as it stands now, as an international standard, is a fair one, life plus 50, and that is the international standard.

Mr. David de Burgh Graham: It is the international standard, but if you were drawing your own rules, would it be 50 years, 25 years, or at death that the copyright ends?

Ms. Nancy Marrelli: I don't think it's unfair. That's a personal opinion. I can't speak for all archivists about that.

I think that with creative commons and the ability to waive your copyright, it's perfectly legitimate. If you want to make things openly accessible, it's very easy now to do so.

Mr. David de Burgh Graham: That's fair.

In speaking of the creative commons and waiving copyright, I think it's a good segue into crown copyright, which is a topic that I find really fascinating, and a lot of people have never heard of it. Section 105 of the U.S. Copyright Act prevents government-created material from being copyrighted.

Ms. Nancy Marrelli: It's absolutely open and free.

Mr. David de Burgh Graham: That's right. It's public demand.

Is that the correct model for Canada?

Ms. Nancy Marrelli: We have crown corporations, and I think there are some issues around crown corporations that need to be addressed. I think it's a little more complicated here.

The British model is a little bit different from completely open. That's why I think we need a proper sit-down and investigation with stakeholders to look at what the issues are and try to come up with reasonable solutions. For heaven's sake, let's do it and stop talking about doing it.

Mr. David de Burgh Graham: Let's do something.

What in the British model should we emulate, in your opinion?

Ms. Nancy Marrelli: There are different provisions. It's a little more nuanced than absolutely open copyright for everything. I think that nuance is more suitable for our environment.

● (1625)

Mr. David de Burgh Graham: Have you ever had material that you couldn't archive because of copyright rules? Can you give examples to illustrate that?

Ms. Nancy Marrelli: The example that I gave is one of those situations where you have the thing physically in your hand. It's going to disappear because the CD is deteriorating, and there's nothing you can do legally to make it available for the long term. It's ridiculous.

Mr. David de Burgh Graham: Yes. I was a staffer the last time this topic came up, and I was working for the critic at the time during the 2013 reform. I remember learning at the time that the national archives had apparently lost about 80% of the videotape of Parliament prior to 2005.

Ms. Nancy Marrelli: Audiovisual materials are a big issue. Anything that's not in your hand that you can see is definitely problematic. Definitely the AV materials are an issue, but we have the right to reformat those audiovisual materials, as long as they're not protected by a TPM. If it's under digital lock, we can't reformat. If it's not under digital lock, we already have the right in the act to reformat it. Whether we have the funding to do that is another matter.

Mr. David de Burgh Graham: That makes sense.

Are you familiar with archive.org?

Ms. Nancy Marrelli: I'm sorry?

Mr. David de Burgh Graham: The Internet archive, archive.org.

Ms. Nancy Marrelli: Yes, of course.

Mr. David de Burgh Graham: Is offshoring of material to circumvent copyright happening a lot? Is that a method to protect materials?

Ms. Nancy Marrelli: I don't think so. Not that I know of. I can't imagine how that would work.

The international framework with the international treaties is such that work is protected no matter where it is.

Mr. David de Burgh Graham: Right, well—

Ms. Nancy Marrelli: The rules are slightly different, but if you go to the U.S., the terms of protection are life plus 70 rather than life plus 50. You wouldn't be gaining much by going offshore. I can't imagine....

Mr. David de Burgh Graham: No, but they also have much looser fair use rules than our fair dealing rules, and if you look at—

Ms. Nancy Marrelli: They're different, but the reality is that when you're using copyright, it's the place where you are using the material whose laws apply.

Mr. David de Burgh Graham: Right.

Ms. Nancy Marrelli: If you're using the material in Canada, you have to follow the rules in Canada whether you access it from the U. S. or you access it from Canada. I can't see the way that would be an advantage.

Mr. David de Burgh Graham: Apparently, my copyright's up.

Thank you.

The Chair: Thank you very much.

We're going to move to Mr. Lloyd.

You have five minutes, please.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for coming today.

My first question is for you, Ms. Marrelli. You brought up a good example, a CD that is deteriorating. You were saying that a change in the law to allow you to circumvent a TPM is the solution.

Is there the technology out there to circumvent that law?

Ms. Nancy Marrelli: Yes, absolutely.

Mr. Dane Lloyd: You've said that you're not able to speak to the owner of the copyright for what reason?

Ms. Nancy Marrelli: Sometimes you can't. Sometimes you can't reach them. Sometimes you don't know who they are.

In this case, it was a group that came together and then dispersed.

Mr. Dane Lloyd: I think that's called an orphaned work, right?

Ms. Nancy Marrelli: It's an orphaned work, yes.

Mr. Dane Lloyd: Would you say that we could make a distinction between orphaned works and non-orphaned works? Should we be able to circumvent a TPM where the copyright holder is explicitly against the circumvention of that?

Ms. Nancy Marrelli: It would be one way to go, but the reality is if you have the right to do it in the act, what's the problem with saying you can do it without going through a whole rigmarole? We don't have to do anything for materials that are not under digital locks. Why is suddenly circumventing a digital lock an issue when you already have the right to perform the act?

Mr. Dane Lloyd: Thank you.

My next question is for Ms. Peets. It's more simple. I think it's straightforward.

If copyright were better and more effectively enforced and authors and publishers received the royalties that they believe they're entitled to from educational institutions, would you see the need for a mandatory tariff in that case? If it was being dealt with effectively, enforcement was happening, people who are illegally copying works were being held accountable and paying for that, would you see the need for a mandatory tariff regime?

Ms. Christine Peets: I think we still do need the tariffs. We do need the universities, the libraries, and the other institutions, to pay their fees to Access Copyright because that really is the only way. I think it would be too difficult to develop some sort of an enforcement procedure. Who then is going to do that enforcement and how is that going to be carried out and that type of thing? I think if you just stick with the fees that are negotiated with each institution, then that is the easiest way to make sure that the publishers and creators do get paid for their work.

● (1630)

Mr. Dane Lloyd: There's a significant amount of worry from the universities and the educational institutions that they're not really getting what they're paying for. They're not getting the value for the money that they're paying for, and so it seems to me there should be a more transactional model so that they can actually get what they're paying for.

Don't you think there needs to be a better way for universities?

Ms. Christine Peets: Perhaps there needs to be a different model, but universities at this point are claiming that they shouldn't have to pay a tariff for this material because it's being used for educational purposes and education should be free.

To that, I would answer that education isn't free. Students pay tuition. University professors are paid. Support staff is paid.

Education isn't free. Why should the material that is created by the writers be free?

Mr. Dane Lloyd: I totally sympathize with the point you're making. We had some testimony from the University of Calgary last week that they have attempted to pay for transactional licences with Access Copyright but that they were refused. They weren't allowed to do transactional licences when they wanted to do that.

What would be your comment on that? The universities are trying —not all universities, but in some cases—to get transactional licences, but they're being refused. What's your comment on that?

Ms. Christine Peets: I can't speak for Access Copyright.

Mr. Dane Lloyd: Okay.

How much time do I have left, Mr. Chair?

The Chair: You have about 45 seconds.

Mr. Dane Lloyd: Could you give me a quick comment? Are authors being better protected in jurisdictions similar to Canada, for example, the European Union or the United States, and what do they do better for authors and publishers, or what do they worse, in your opinion?

Ms. Christine Peets: New York has just enacted legislation that is called "Freelance Isn't Free". I think if Ontario, to start, and Canada perhaps, to follow, could do something like that, it would ensure that more authors are being paid for their work, particularly when it's done on a freelance basis and not by staff writers with newspapers and magazines.

Mr. Dane Lloyd: Thank you. I appreciate that.

Ms. Christine Peets: Thank you.

The Chair: We're going to move to Ms. Ng.

You have five minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you so very much, both of you, for coming to speak to us today.

My first question is for Madam Marelli, to help me understand a bit better the users of the archives, the researchers and so forth. When we were talking about crown copyright and that material, who would be the typical users who would want to access those bodies of work?

Ms. Nancy Marrelli: It could be a family doing a family history. I'll pull an example totally out of my head. Let's say the family of a chaplain in a prison received a letter from the head of that prison because that chaplain was killed during a prison riot in the 1800s. Well, that letter is still under perpetual protection because it was never published, but the family wants to write a family history and needs to publish it. Why shouldn't that letter be included in the materials that we can digitize anyway, if we are looking at prison riots and want to prepare documentation on our websites about that? There's no reason that material should not be included.

Ms. Mary Ng: I think about the efforts these days to get greater Canadian content, and the support for Canadian creators, and when I think about creators, I think about young people. I think about those innovators. I think about the kind of research or discovery or finding of works, and ways for them to access material. As we think about the Copyright Act and how we might need to look at it, what do we need to be thinking about in the future?

In other words, you have this great body of work at the archives, and we want to encourage more, not fewer, content creators.

● (1635)

Ms. Nancy Marrelli: We want to get it out there.

Ms. Mary Ng: We want it to get out there, and you know, greater digitization and technology formats allow that, and we can have another generation of great content creators in this country.

On that, I have a slightly different question. Data mining might actually come as part of that type of work. You get content in many ways, but some of it might actually be through data mining. Do you think we should be looking at something like an exception that allows for that kind of content scraping, if you will, or content mining, as a provision in the Copyright Act that allows for a future-looking potential use?

Ms. Nancy Marrelli: Digitizing the materials in the first place is an issue. We won't digitize material. You can't mine material that hasn't been digitized—

Ms. Mary Ng: I see.

Ms. Nancy Marrelli: —unless you're doing it by hand, with index cards, which is the old way of doing it.

We cannot think about digitizing materials unless we can actually make them accessible on our website. That's the kind of materials we actually digitize.

Before we even get to the point of data mining, you have to be able to go through the digitization process, and we talk about orphan works in the brief that we're going to submit. I didn't talk about it today because we had a limited amount of time, but orphan works are definitely one of those issues. There are barriers, and in the case of archives, most of the material in our institutions is not commercially viable material. It's material from families. It's material from individuals, from companies, material that doesn't have a commercial value in and of itself. The material has a historical value. So the barriers to doing the digitization in the first place are an issue before you even get to the data mining.

Ms. Mary Ng: How much of the collection is digital?

Ms. Nancy Marrelli: Do you mean our materials?

Ms. Mary Ng: Yes.

Ms. Nancy Marrelli: I would say less than 5%.

Ms. Mary Ng: Oh, really? Okay.

Ms. Nancy Marrelli: It's very little. We have masses of material.

Ms. Mary Ng: Right, okay.

On that point about whether or not there is commercial value to it, I am hoping that in the future some of those creators may actually look through it. In looking at how they might put that out there, they could very well find a stream for it, but that's another conversation.

Ms. Nancy Marrelli: We're working at digitizing materials, but archives don't have a lot of money.

Ms. Mary Ng: Okay.

Ms. Peets, just to pick up on a point that was raised a little earlier —actually, I think it was when we were in Montreal—we heard from an organization that is essentially a platform. If I understand it, their technology remunerates authors based on usage, down to a chapter level.

We talk about access to copyright through a tariff approach. We've certainly heard from institutions that it is a challenge because, while you're right that education isn't free, we also want educational institutions to get the material they want and not to have to pay for duplication, which is what we've heard in some of the testimony.

In your view, could something like that work? There are emerging platforms, and certainly, we're seeing it in the music industry, where there is an ability to compensate on a more transactional and on a more targeted use basis. Can you comment on that?

Ms. Christine Peets: I think you're talking about the pay-per-click model. Most of that is offered at such a low rate. It's a penny per click kind of thing, so if you have written a story or you've written a chapter of a book, you'll get a penny for every person who reads it. That could take a long time. That means a hundred people have to read it for you to make a dollar, so to do a transactional payment like that is very problematic.

Ms. Mary Ng: So transactional payment is problematic as it's remunerated now, but if it were remunerated in a fairer way, could the mode work?

Ms. Christine Peets: I suppose so, but I think you only have to look at what the models are now, and they certainly are skewed towards the person putting the material on the platform, not the person who wrote the material.

● (1640)

Ms. Mary Ng: Thank you.

The Chair: Thank you.

We're going to move to the last questioner, who is Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

I yield my time to MP Lametti.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): Thank you very much.

Thanks to both of you for coming. I'm an old copyright professor, and I am guilty of rarely having mentioned the reversionary right in over 20 years of teaching, so I am as guilty as anyone else.

Ms. Nancy Marrelli: I am one of those as well.

Mr. Frank Baylis: He's an old professor.

Voices: Oh, oh!

Mr. David Lametti: That's it. I'm guilty.

Ms. Nancy Marrelli: As long as we don't become relics.

Mr. David Lametti: Ms. Peets, I remember teaching the case of Robertson v. Thomson Corp more than once, and thinking that the good news is that Heather Robertson won, and the bad news is that Heather Robertson won. This is simply because, as you said and as I think we all predicted at the time, publishers would just react by ensuring that every time they signed a contract to a freelancer, they would get all the rights.

Ms. Christine Peets: Yes.

Mr. David Lametti: That's even truer now because when Heather Robertson wrote the articles in 1995, we were talking about microfiche and putting articles on databases, before linking on the Internet and that kind of stuff were even in anyone's thoughts. The case was finally decided in 2006.

Help us find a solution. It's not even a copyright problem. It's a contract problem.

Ms. Christine Peets: It is a contract problem.

Mr. David Lametti: It's an imbalance of power contract problem because the publishers, newspapers, or whoever is buying he freelancer's work are always going to have a great deal more power. As a freelancer you have to sell your work, and now publishers are going to want to ensure that they don't get sued if something gets linked or if they want to use it in some other format.

Is there some model out there that can help us? I'm trying to get my head around it, and I'm not sure I can. I sympathize with the problem, but I'm not sure where I see the solution.

Ms. Christine Peets: I can speak only to my personal experience on this. It was always the large publishers that wanted all the rights. I never had that problem with a small publisher, who you would think would want all the rights and who would maybe make that demand even more strongly than the larger publishers would. That, to me, was always an interesting paradox, because the people who, as you say, had all the power wanted even more power, and the struggling publishers, who were maybe putting out one or two magazines, paid me reprint rights. They paid me if they wanted to put something on their website, and that kind of thing.

Where the solution lies is that there is a balance that can be achieved. It's a question of will and whether the publishers really want to have that. If you can look at it as that without strong content they will not be able to sell their advertising, then they need to pay for that content.

Mr. David Lametti: If your association finds any models or can think through a model, would you please submit it?

Ms. Christine Peets: We will. We will take that on that task. Thank you.

Mr. David Lametti: That would be great.

Ms. Marelli, thank you for coming.

There is an argument out there, in academic circles at the very least, that fair dealing provisions already apply to archives and other fair dealing uses with regard to TPMs.

Have you tried any of this in court, that fair dealing applies to the TPM provisions?

Ms. Nancy Marrelli: Do you mean that we should just go ahead and circumvent?

Mr. David Lametti: I'm not saying that, but do you know of any cases that have—

Ms. Nancy Marrelli: How many archivists do you know who are really daring and willing to break the law?

Mr. David Lametti: I know at least one. I've just met one apparently.

Ms. Nancy Marrelli: Yes, maybe.

We do risk management, for sure, and there are some instances when an archivist just quite honestly can't let the thing go.

Mr. David Lametti: Yes. You cross yourself and you do it.

Ms. Nancy Marrelli: It's just ridiculous, and the chances of you actually being taken to court over this are very low. But we shouldn't be in that position. We really shouldn't be put in that position. We're allowed to do it under the provisions of the law. Why can't we just have an exception for circumventing TPMs? It's just not that complicated.

I remember the process in 2012 so well. Everyone was absolutely fed up with the discussion. People were ready to kill each other at the end, and finally the government just said, "No exceptions, period. That's it. That's all. We're not excepting anything." Everyone in the room knew and understood that it was crazy for archives, but it just went through. It just slipped into the cracks.

Mr. David Lametti: Okay.

● (1645)

The Chair: You're done. Thank you very much.

On that note, I want to extend our gratitude to our two witnesses today.

Ms. Nancy Marrelli: Thank you for having us.

The Chair: It's been very informative, and we're looking forward to continuing our study.

We are going to suspend for a few minutes while we get everything in order and say goodbye to our witnesses, and then we'll come back.

Thank you.

● _____ (Pause) _____ ●

The Chair: We are back.

Mr. Masse, I'll let you go.

I just want to say that we do have some committee business that we need to get to, not that I want to limit any of this. We were supposed to be in camera. If we can leave about 20 minutes, is that enough?

All right.

● (1650)

Mr. Brian Masse: Thank you, Mr. Chair.

I have a motion that I gave notice for at the last meeting. I'd like to read the motion and bring it to a vote for the committee. It's a small motion. I'm just going to read it and then I'll speak briefly to it. I know there are potentially other motions here today. I think it speaks for itself:

> That the Standing Committee on Industry hold hearings to study the proposed purchase by this government of the Trans Mountain Expansion Project pipeline and infrastructure, including: a) the terms of the purchase including the costs to taxpayers and long-term impacts of purchasing and completing this project, b) the direct and indirect impacts on Canadian businesses directly in competition with pipeline products and the use of those products in respective markets, and, c) the plan for the sale of this project once completed.

Could I speak to the motion?

The Chair: Go ahead.

Mr. Brian Masse: Thank you, Mr. Chair.

I won't get into the full (a), (b), and (c) of the motion, but I will get into the general spirit of it. Why I think it belongs here at the industry committee is that the pipeline purchase and the potential expansion of the pipeline will have direct competitive implications not only on the industry itself, that being oil and natural resources, but also on the subsequent markets the products then go to, especially given the fact that we now have public participation in the distribution of the product. That subsidization potentially could affect Canadian businesses.

For example, if in the expansion of the project and the diversion, the products going through the pipeline go to China and are used to produce steel that competes against Canadian industries, or if they're actually fuelling components, it's something that we at least need to have a discussion about and hear some witnesses on.

There are significant consequences with regard to the supply chain, the cost for consumers, and the viability of different products in the market. You have the outright industry itself in terms of how consumable oil and other energy products are used for the production of goods and services, and then, if they are publicly subsidized, you have the actual use and the competition with similar ones that you have to compete against. That's why I believe it would be appropriate to have hearings on this motion.

I will conclude by saying that I will be keeping an open mind in regard to our current studies, but if we can't get this done by the end of this session, I'm hoping that perhaps some meetings in the fall would be appropriate, so that we can provide at least a bit of a lens on the positive, potentially negative, or challenging consequences. Again, it's about amelioration for markets, consumers, and competitors when there is government intervention in this respect.

The Chair: Mr. Jeneroux.

Mr. Matt Jeneroux: Mr. Chair, we on this side fully support the motion put forward by Mr. Masse. I think what you're seeing right now is that there are two parties here that are certainly willing to debate the Trans Mountain pipeline and the impact it will have on the taxpayer, and certainly now that we all own it. I think it's also important to note that there is a $4.5-billion commitment by the government to this pipeline, but that does nothing to actually get the pipeline built.

I think it would be very informative for and also helpful to the government if we undertook a study here at the committee to look at the three things that Mr. Masse put forward in his motion. Certainly we would be supportive of this coming about urgently; I'd even suggest that there would be some appetite on this side of the table to do it over the summer months too. I think that's how important this motion is.

The Chair: Mr. Baylis.

Mr. Frank Baylis: Well, if I were going to support a motion, I'd have to support Mr. Masse's motion. It's not that Mr. Jeneroux's motion isn't very well written too. They're both excellent motions.

In reality, this pipeline purchase falls under two ministers who are not the ISED minister. They fall under Mr. Carr, at Natural Resources, and Minister Morneau, at Finance. That's not to belittle this or to say that it's not an important issue, but it's not our issue any more than it's our issue to study agricultural issues and matters.

In that sense, I would say that we would be against it. We're coming at it with regard to the fact that we're against it strictly because it's not our minister who is involved. He hasn't been involved in any of the discussions or announcements on it.

It really sits with the Minister of Finance and the Minister of Natural Resources. Their committees are unto themselves in terms of what they choose to do or not, but that's where this should be done. I would encourage you to speak to your colleagues on those two committees to push it forward.

● (1655)

The Chair: Mr. Jeneroux.

Mr. Matt Jeneroux: Thank you, Mr. Baylis, for allowing us to go back and forth a little bit here, at least, I imagine, before debate is adjourned at...or voted against.

I do respectfully disagree with the comments saying that this isn't our issue. I think it's every committee's issue, to be honest with you. I think there is a lot at stake, particularly in the industry committee. We're a very integral and important committee, if not one of the most important, in this Parliament. I think the industries that would be affected by this certainly fall within the purview of both the ISED minister and the tourism and small business minister.

I think all of those are reasons why this is something that we as a committee should come together and look at collectively. The timing is I think urgent right now.

The Chair: Do we have any other speakers?

Then we shall call the vote.

An hon. member: I'd like a recorded vote.

(Motion negatived: nays 5; yeas 4)

The Chair: Mr. Lloyd.

Mr. Dane Lloyd: If I may, Mr. Chair, I'd like to put a new motion on notice for consideration. I'd like to read it into the record:

> That the Standing Committee on Industry, Science and Technology undertake a study of four meetings to review, among other things: the impacts of US imposed tariffs on Canadian Steel and Aluminum producers and the related supply chains; and that the Committee reports the findings back to the House and make recommendations on measures that could be taken to protect the Canadian industry and its competitiveness.

I'll bring that up at the next meeting.

The Chair: The notice of motion has been received. Thank you very much.

We will suspend and then go in camera.

[*Proceedings continue in camera*]

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